



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/354,177	12/12/94	CHILDRESS	41935

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EXAMINER
TRAN LIEN T

ART UNIT	PAPER NUMBER
1302	18

DATE MAILED: 08/19/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/354,177

Applicant(s)

Childress et al.

Examiner

Lien Tran

Group Art Unit

1302



☒ Responsive to communication(s) filed on May 19, 1997

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-42 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-42 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 18

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson in view of Elston and Chum et al. for the same reason set forth in paragraph 2 of the previous office action and for the additional reason set forth below.

With respect to claim 32, the use of metallocene to prepare the homogenous polymer is conventional and would have been obvious to one skilled in the art. With respect to the additional layers and the selected material used, it would have been obvious for one to add additional layers to increase the strength of the film and to select the polymer for the layer which would give the most optimum properties to the film. This is a matter of optimization which have been held to be within the skill of one in the art.

2. In the response filed May 19, 1997, applicant argues none of the references discloses the homogeneous ethylene/alpha-olefin copolymer has a total free shrink at 185 degree F of from about 10-100%. Applicant states the film must be oriented at a relatively low temperature to have free shrink at such low temperature and not just any polymer can be oriented at such a low temperature. Many polymers cannot undergo orientation at low enough temperature to provide such free shrink. This argument is not persuasive. Applicant tends to argue that the claimed homogenous ethylene/alpha-olefin copolymer is different from the prior art polymer; however, applicant had not shown how the two copolymers are different. Applicant claims a homogeneous ethylene/alpha-olefin copolymer; the prior teaches such copolymer. If the copolymer in the prior art can not be oriented at low temperature to have free shrink at low temperature, it is not seen how the claimed copolymer has such property because the two polymers are the same. A

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conclusion that the copolymer in the prior art does not have the property claimed when it is the same polymer as claimed is not deemed convincing when there is no evidence to support such conclusion. Applicant states many, indeed most, ethylene-based polymers cannot be used to make a film which has a total free shrink of from about 10-100% at 185 degree F. While this might be true, it is not true in the instant case because the prior art does not disclose just any ethylene-based polymers; it discloses homogeneous ethylene-alpha-olefin copolymer which is the same copolymer used in the claimed invention.

Applicant further argues although Elston states the homogenous polymer can be used to provide higher impact strength, this does not indicate that a heat-shrinkable film containing homogeneous ethylene/alpha-olefin copolymer will necessarily have higher impact strength. This argument is not persuasive. Applicant argues the use of the copolymer in a heat-shrinkable film does not necessarily give higher impact strength; applicant is not 100% sure that the copolymer will not give higher impact strength. Applicant has not submitted any evidence to show that the polymer will not give higher impact strength in a heat-shrinkable film. Furthermore, Elston just gives the general properties of the homogenous copolymer; the reference is not restricting these properties to any type of film. Applicant concludes that the copolymer will not have the specific property; however, such conclusion lacks evidence to support it. Applicant states that applicants have discovered that the properties obtained in blown films are often not obtained in heat shrinkable film. This discovery does not affect the rejection because the reference does not

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restrict the copolymer to any type of film and furthermore, the conditions of applicant's testing is not known. Applicant has not compared the claimed invention to the closest prior art.

Applicant further argues Ferguson discloses a two-layer film which self-adheres to form a four layer patch film; Ferguson does not specifically disclose or suggest a patch film having three or more layers. This argument is not persuasive. The addition of additional layers to increase the strength of the patch is a parameter which is well within the determination of one skilled in the art. It would only require routine experimentation to determine the number of layers and the materials for the specific layers which would give the most optimum properties to the patch. The art recognizes that homogenous ethylene/alpha olefin copolymer exhibits many superior properties; it would have been within the skill to arrange the layers in such a way that would give the most optimum properties.

3. Applicant's arguments filed May 19, 1997 have been fully considered but they are not persuasive.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire **THREE MONTHS** from the date of this action. In the event a first response is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Mon-Fri from 6:30 to 4:00. The fax phone number for this Group is (703)305-3601 .

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0648.

August 15, 1997



Lien Tran
Primary Examiner
Group 1300